

Re Kele [2018] VSC 159 (10 April 2018) – Victorian Supreme Court

*Note: this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Application for bail’ – ‘Breach of protection order’ – ‘Exposing children to domestic and family violence’ – ‘Perpetrator interventions’ – ‘Physical violence and harm’ – ‘Show cause’

Charges: Contravention of family violence intervention order x 1; Intending to cause harm or fear x 1; Unlawful assault x 2; Home invasion x 1; Aggravated burglary x 1; Theft x 2.

Case type: Application for bail.

Facts: The applicant was arrested for a family violence incident and an unrelated home invasion ([1]). The family violence incident occurred between the applicant and the victim, who were in a relationship for 4 years and had a 22-month-old son ([7]). The applicant accused the victim of changing his Centrelink account details and cheating on him. He grabbed the victim by her arms, pushed her to the ground, and hit her face, head and hands. The victim left the house and called for help with a payphone ([8]-[9]). The applicant pleaded guilty to one charge of assault and one charge of breaching a family violence intervention order.

Issues: Whether bail should be granted. Because the home invasion charge involved the use of an offensive weapon, the applicant was required to show cause why his detention in custody is not justified, pursuant to s 4(4)(c) of the *Bail Act 1977* ([23]).

Decision and Reasoning: Bail was granted.

Champion J considered the following factors in favour of the applicant:

- > the applicant’s youth, being 21 years old ([44]);
- > the applicant’s relative lack of criminal history ([45]);
- > limited instances of domestic violence ([46]);
- > the defence submitted that the likely penalty for the family violence incident would be higher than the time the applicant has already spent in custody ([48]);
- > the likely of up to 12 months delay in having the matter heard in the County Court ([50]);
- > the victim had moved to a secret location ([54]); and
- > if the applicant was remanded in custody, he would not be able to access a men’s behaviour change program ([54]).

Champion J considered the following factors against the applicant:

- > the prosecution submitted that the penalty for the breach of domestic violence order would include imprisonment, because it was a serious breach and occurred in front of their child ([56]); and
- > the applicant did not have accommodation ([61]).

Champion J considered that the applicant has shown cause why his detention in custody is not justified ([62]). His Honour remarked that while the level of violence towards the victim was unacceptable, it did not involve the use of a weapon, threats to kill or the infliction of significant physical injury ([64]).